

Draft

General Instructions

Form TD F 90-22.1 (the “FBAR”) is used to report a financial interest in or signature authority over a foreign financial account. The FBAR must be received by the Department of the Treasury on or before **June 30th** of the year immediately following the calendar year being reported. Unlike the filing date for an income tax return, the June 30th filing date for the FBAR may not be extended.

Who Must File an FBAR.

The following persons are required to file an FBAR:

A United States citizen;

A United States resident;

An entity, including but not limited to, a corporation, partnership, or limited liability company created or organized in the United States or under the laws of the United States; and

A trust or estate formed under the laws of the United States.

See definition of United States below.

If the person has:

A financial interest in or signature authority over any foreign financial account and the aggregate value of the financial account(s) exceeds \$10,000 at any time during the calendar year. See Part II, Item 15, regarding the \$10,000 threshold.

The tax treatment of an entity does not determine whether the entity has an FBAR filing requirement. For example, an entity that is disregarded for purposes of Title 26 of the United States Code must still file an FBAR, if otherwise required to do so. Similarly, a trust for which the trust income, deductions, or credits are taken into account by another person for purposes of Title 26 of the United States Code must file an FBAR, if otherwise required to do so.

See Exceptions below.

General Definitions

Financial Account. A financial account includes, but is not limited to, a securities, brokerage, savings, demand, checking, deposit, time deposit, or other account maintained with a financial institution (or other person performing the services of a financial institution). A financial account also includes a commodity futures or options account, an insurance policy with a cash surrender value (such as a variable annuity or a whole life insurance policy), an annuity, and shares in a mutual fund or similar pooled fund (i.e., a fund with a regular net asset value determination and redemptions).

Foreign Financial Account. A foreign financial account is a financial account that is located outside of the United States. For example, an account maintained with a foreign branch of a United States bank is a foreign financial account. An account maintained with a United States branch of a foreign bank is not a foreign financial account. An insurance or annuity policy that is purchased outside of the United States, as defined in 31 CFR §103.11(nn), from a non-United States issuer is a foreign financial account.

Financial Interest. A person has a financial interest in each financial account for which

(1) the person is the owner of record or holder of legal title, regardless of whether the account is maintained for that person's benefit or for the benefit of another person;

or

(2) the owner of record or holder of legal title is one of the following:

(a) An agent, nominee, attorney, or a person authorized to act on behalf of the person with respect to the account;

(b) A corporation in which the person owns directly or indirectly: (i) more than 50 percent of the total value of shares of stock or (ii) more than 50 percent of the voting power of all shares of stock;

(c) A partnership in which the person owns directly or indirectly: (i) an interest in more than 50 percent of the partnership's profits (distributive share of partnership income taking into account any special allocation agreement) or (ii) an interest in more than 50 percent of the partnership capital;

(d) A trust, if the person: (i) is the trust settlor; and (ii) has an ownership interest in the trust for United States federal tax purposes. See 26 U.S.C. §§ 671 through 679 to determine if a person has an ownership interest in a trust for a year for United States federal tax purposes;

(e) A trust, if the person has more than a 50 percent beneficial interest in the assets or income of the trust for the calendar year, as determined under all of the facts and circumstances, including the terms of the trust and any accompanying documents;

(f) A trust that was established by the person and for which the person has appointed a trust protector that is subject to such person's direct or indirect instruction; or

(g) Any other entity, if the person owns directly or indirectly more than 50 percent of the voting power, total value of equity interest or assets, or interest in profits.

Person. A person includes an individual and all legal entities including, but not limited to, limited liability companies, corporations, partnerships, trusts, and estates.

Signature Authority. Signature authority is the authority (alone or in conjunction with any other individual) to control the disposition of money, funds, or other assets held in a financial account by delivery of instructions (whether communicated in writing or otherwise) directly to the financial institution (or other person performing the services of a financial institution), with which the financial account is maintained. See Exception for Signature Authority.

United States. For FBAR purposes, the United States includes the States, the District of Columbia, all territories and possessions (for example American Samoa, the Commonwealth of the Northern Marianas Islands, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands), and the Indian lands as defined in the Indian Gaming Regulatory Act. References to the laws of the United States include the laws of the United States federal government and the laws of all places listed in this definition.

United States Resident. A United States resident is an alien residing in the United States. To determine if the filer is a resident of any place listed in the definition of United States, apply the residency tests in 26 U.S.C. § 7701(b).

Exceptions

Certain Accounts Jointly Owned by Spouses. The spouse of an individual who files an FBAR is not required to file a separate FBAR if the following conditions are met: (1) all

the financial accounts that the spouse is required to report are jointly owned with the filing spouse; (2) the filing spouse reports the jointly owned accounts on a timely filed FBAR; and (3) both spouses sign the FBAR in Item 44. See Explanations for Specific Items, Part III, Items 25-33. If the filer's spouse is required to file an FBAR for any account that is not jointly owned with the filer, the filer's spouse must file a separate FBAR for all accounts, including those owned jointly with the filing spouse.

Consolidated FBAR. If a person is named in a consolidated FBAR filed by a more than 50 percent owner, the person is not required to file a separate FBAR. See Explanations for Specific Items, Part V.

Correspondent/Nostro Account. Correspondent or nostro accounts (which are maintained by banks and used solely for bank-to-bank settlements) are not required to be reported on an FBAR.

Governmental Entity. A foreign financial account of any governmental entity is not required to be reported on an FBAR by any person. For purposes of this form, governmental entity includes: (1) a college or university that is an agency or instrumentality of, or owned or operated by, a governmental entity; and (2) an employee retirement or welfare benefit plan of a governmental entity.

International Financial Institution. A foreign financial account of any international financial institution of which the United States is a member is not required to be reported on an FBAR by any person.

IRA Owners and Beneficiaries. An owner or beneficiary of an IRA is not required to file an FBAR with respect to a foreign financial account held in the IRA.

Participants in and Beneficiaries of Tax-Qualified Retirement Plans. A participant in or beneficiary of a retirement plan described in Internal Revenue Code § 401(a), 403(a), or 403(b) is not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan.

Signature Authority. Signature authority over a foreign financial account need not be reported on an FBAR by an individual with no financial interest in the foreign financial account in the following situations:

(1) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report signature authority over a foreign financial account owned or maintained by the bank.

(2) An officer or employee of a financial institution that is registered with and regulated or examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report signature authority over a foreign financial account owned or maintained by the financial institution.

(3) An officer or employee of an Authorized Service Provider need not report signature authority over a foreign financial account that is owned or maintained by an investment company that is registered with the Securities and Exchange Commission. Authorized Service Provider means an entity that is registered with and examined by the Securities and Exchange Commission and provides services to an investment company registered under the Investment Company Act of 1940.

(4) An officer or employee of an entity whose class of equity securities is listed on any United States national securities exchange need not report signature authority over a foreign financial account in which the entity has a financial interest. An officer or employee of a United States subsidiary of such entity need not report signature authority over a foreign financial account of the subsidiary.

(5) An officer or employee of a United States entity that has a class of securities registered under section 12(g) of the Securities and Exchange Act need not report signature authority over a foreign financial account of such corporation.

Trust Beneficiaries. A trust beneficiary with a financial interest described in section (2)(f) is not required to report the trust's foreign financial accounts on an FBAR if the trust, trustee of the trust, or agent of the trust: (1) is a United States citizen, a United States resident, an entity created or organized in the United States or under the laws of the United States, or a trust formed under the laws of the United States; and (2) files an FBAR disclosing the trust's foreign financial accounts.

United States Military Banking Facility. An FBAR need not be filed for a financial account maintained with a financial institution located on a United States military installation, even if that military installation is outside of the United States.

Filing Information—Do NOT file with Federal Income Tax Return

When and Where to File. The FBAR is an annual report and must be received by the Department of the Treasury **on or before June 30th** of the year following the calendar year being reported.

File by mailing the FBAR to:
Department of the Treasury
Post Office Box 32621
Detroit, MI 48232-0621

If an express delivery service is used, file by mailing to:
IRS Enterprise Computing Center
ATTN: CTR Operations Mailroom, 4th Floor
985 Michigan Avenue
Detroit, MI 48226

The FBAR may be hand delivered to any local office of the Internal Revenue Service for forwarding to the Department of the Treasury, Detroit, MI. The FBAR may also be delivered to the Internal Revenue Service's tax attaches located in United States embassies and consulates for forwarding to the Department of Treasury, Detroit, MI. The FBAR is not considered filed until it is received by the Department of the Treasury in Detroit, MI.

No Extension of Time to File. There is no extension of time available for filing an FBAR. Extensions of time to file federal tax returns do NOT extend the time for filing an FBAR. If a delinquent FBAR is filed, attach a statement explaining the reason for the late filing.

Verification of Filing. Ninety days after the date of filing, the filer can request verification that the FBAR was received. An FBAR filing verification request may be made by calling 1-800-800-2877 and selecting option 2. Up to five documents may be verified over the phone. There is no fee for this verification. Alternatively, an FBAR filing verification request may be made in writing and must include the filer's name, taxpayer identification number, and the filing period. There is a \$5.00 fee for verifying five or fewer FBARs and a \$1.00 fee for each additional FBAR. A copy of the filed FBAR can be obtained at a cost of \$0.15 per page. Check or money order should be made payable to the United States Treasury.

The request and payment should be mailed to:
IRS Enterprise Computing Center/Detroit
ATTN: Verification
P.O. Box 32063
Detroit, MI 48232

Record Keeping Requirements. Persons required to file an FBAR must retain records that contain the name in which each account is maintained, the number or other

designation of the account, the name and address of the foreign financial institution that maintains the account, the type of account, and the maximum account value of each account during the reporting period. The records must be retained for a period of five years from June 30th of the year following the calendar year reported and must be available for inspection as provided by law. Persons filing an FBAR should retain a copy for their records.

Explanations for Specific Items

Part I

Item 1. The FBAR is an annual report. Enter the calendar year being reported.

To amend a filed FBAR, check the “Amended” box in the upper right hand corner of the first page of the FBAR, make the needed additions or corrections, attach a statement explaining the additions or corrections, and staple a copy of the original FBAR to the amendment. An amendment should not be made until at least 90 calendar days after the FBAR is filed. Follow the instructions in “When and Where to File” to file an amendment.

Item 2. Check the appropriate box describing the filer. Check only one box. Individuals filing based on signature authority, check box “a.” If filing a consolidated FBAR, check box “d.” To determine if a consolidated FBAR can be filed, see Part V. If the type of filer is not listed in boxes “a” through “c,” check box “e” and enter type of filer. Persons that should check box “e” include, but are not limited to, trusts, estates, limited liability companies, and tax-exempt entities (even if the entity is organized as a corporation). A disregarded entity must check box “e” and enter its type of person and the term “(D.E).” For example, a limited liability company that is disregarded for United States federal tax purposes would enter “limited liability company (D.E).”

Item 3. Provide the filer’s taxpayer identification number. Generally, this is the filer’s United States social security number (SSN), United States individual taxpayer identification number (ITIN), or employer identification number (EIN). Numbers should be entered with no spaces, dashes, or other punctuation throughout the FBAR. If the filer does NOT have a United States taxpayer identification number, complete Item 4.

Item 4. Complete Item 4 only if the filer does NOT have a United States taxpayer identification number. Item 4 requires the filer to provide information from an official foreign government document to verify the filer’s nationality or residence. Enter the document number followed by the country of issuance, check the appropriate type of document, and if “other” is checked, provide the type of document.

Item 5. If the filer is an individual, enter the filer’s date of birth, using the month, day, and year convention.

Items 9, 10, 11, 12 and 13. Enter the filer’s address. An individual residing in the United States must enter the street address of the individual’s United States residence, not a post office box. An individual residing outside the United States must enter the individual’s United States mailing address. If the individual does not have a United States mailing address, the individual must enter a foreign residence address.

An entity must enter its United States mailing address. If the entity does not have a United States mailing address, the entity must enter its foreign mailing address.

Item 14. If the filer has a financial interest in 25 or more foreign financial accounts, check “Yes” and enter the number of accounts. Do not complete Part II (Continuation of Separate Accounts) or Part III (Joint Accounts) of the Report.

If filing a consolidated FBAR, only complete Part V, Items 34 through 42, for each person included in the consolidated FBAR.

Note: If the filer has signature authority over 25 or more foreign financial accounts, only complete Part IV (for signature authority), Items 34-43, for each person for which the filer has signature authority, and check "No" in Part I, Item 14.

The filer must retain the detailed account information otherwise required by the FBAR for five years from June 30th of the year following the calendar year reported. The information must be available for inspection. See Filing Information, Record Keeping Requirements.

Part II

Enter information in the applicable parts of the form only. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

Item 15.

Determining Maximum Account Value. Step 1. Determine the maximum value of each account (in the currency of that account) during the calendar year being reported. The maximum value of an account is a reasonable approximation of the greatest value of currency or nonmonetary assets in the account during the calendar year. Periodic account statements may be relied on to determine the maximum value of the account provided that the statements fairly reflect the maximum account value during the calendar year. For Item 15, if the filer had a financial interest in more than one account, each account is to be valued separately.

Step 2. In the case of non-United States currency, convert the maximum account value for each account into United States dollars. Convert foreign currency by using the Treasury's Financial Management Service rate (this rate may be found at www.fms.treas.gov) from the last day of the calendar year. If no Treasury Financial Management Service rate is available, use another verifiable exchange rate and provide the source of that rate. In valuing currency of a country that uses multiple exchange rates, use the rate that would apply if the currency in the account were converted into United States dollars on the last day of the calendar year.

If the aggregate of the maximum account values exceeds \$10,000, an FBAR must be filed. An FBAR is not required to be filed if the person did not have \$10,000 of aggregate value in foreign financial accounts at any time during the calendar year.

For persons with a financial interest in or signature authority over fewer than 25 accounts that are unable to determine if the aggregate maximum account values of the accounts exceeded \$10,000 at any time during the calendar year, complete Part II, III, IV, or V, as appropriate, for each of these accounts and enter "value unknown" in Item 15.

If a foreign financial account is jointly owned by two or more persons, each person must report the entire value of the account.

Item 16. Indicate the type of account. Check only one box. If "Other" is selected, describe the account.

Item 17. Provide the name of the financial institution with which the account is held.

Item 18. Provide the account number that the financial institution uses to designate the account.

Item 19-23. Provide the complete mailing address of the financial institution where the account is located. If the foreign address does not include a state (e.g., province) or postal code, leave the box(es) blank.

Part III

Enter information in the applicable parts of the form only. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

For Items 15-23, see Part II.

Item 24. Enter the number of joint owners for the account. If the exact number is not known, provide an estimate. Do not count the filer when determining the number of joint owners.

Items 25–33. Use the identity information of the principal joint owner (excluding the filer) to complete Items 25-33. Leave blank items for which no information is available. A spouse having an interest in a jointly owned account with the filing spouse is the principal joint owner. Enter the term “(spouse)” on Line 26 after the last name of the joint spousal owner.

If the filer’s spouse is required to report only jointly owned financial accounts that are reported on the filer’s FBAR, the filer’s spouse need not file a separate FBAR but must also sign the filer spouse’s FBAR to fulfill his or her reporting obligation. See Items 44-46 on page one. If the filer’s spouse is required to file an FBAR for any account that is not jointly owned with the filer, the filer’s spouse must file a separate FBAR for all of the accounts, including those owned jointly with the other spouse.

Part IV—Signature Authority

Enter information in the applicable parts of the form only. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

25 or More Foreign Financial Accounts. Filers with signature authority over 25 or more financial accounts must complete only Items 34-43 for each person on whose behalf the filer has signature authority.

For Items 15-23, see Part II.

Items 34-42. Provide the name, address, and identifying number of the owner of a foreign financial account for which the individual has signature authority but no financial interest. If there is more than one owner of the account for which the individual has signature authority, provide the information in Items 34-42 for the principal joint owner (excluding the filer). If account information is completed for more than one account of the same owner, identify the owner only once and write “Same Owner” in Item 34 for the succeeding accounts of the same owner.

Item 43. Enter filer’s title for the position that provides signature authority (e.g., treasurer).

A United States person who is employed in a foreign country and who has signature authority over a foreign financial account that is owned or maintained by the individual’s employer should only complete Part I and Part IV, Items 34-43 of the FBAR. Part IV, Items 34-43 should only be completed one time with information about the individual’s employer.

Part V—Consolidated FBAR

Enter information in the applicable parts of the form only. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments.

Who Can File a Consolidated FBAR. An entity that owns directly or indirectly more than a 50 percent interest in a legal entity that is required to file an FBAR is permitted to

file a consolidated FBAR on behalf of itself and such other legal entity. Check box “d” in Part I, Item 2 and complete Part V. If filing a consolidated FBAR and reporting 25 or more financial accounts, complete only Items 34-42 for each person included in the consolidated FBAR.

For Items 15-23, see Part II.

Items 34-42. Provide the name, taxpayer identification number, and address of the owner of the foreign financial account as shown on the books of the financial institution. If account information is completed for more than one account of the same owner, identify the owner only once and write “Same Owner” in Item 34 for the succeeding accounts of the same owner.

Signatures

Items 44-46. The FBAR must be signed by the filer named in Part I. If the FBAR is being filed on behalf of a partnership, corporation, limited liability company, trust, estate, or other legal entity, it must be signed by an authorized individual. The authorized individual’s title is entered in Item 45. An authorized official of the person filing the consolidated FBAR must sign the FBAR.

An individual must leave “Filer’s Title” blank, unless the individual is filing an FBAR due to the individual’s signature authority. If an individual is filing because the individual has signature authority over a foreign financial account, the individual should enter the title upon which his or her authority is based in Item 45.

A spouse included as a joint owner, who does not file a separate FBAR in accordance with the instructions in Part III, must also sign the FBAR (in Item 44) for the jointly owned accounts. See the instructions for Part III.

Penalties

A person who is required to file an FBAR and fails to properly file may be subject to a civil penalty not to exceed \$10,000. If there is reasonable cause for the failure and the balance in the account is properly reported, no penalty will be imposed. A person who willfully fails to report an account or account identifying information may be subject to a civil monetary penalty equal to the greater of \$100,000 or 50 percent of the balance in the account at the time of the violation. See 31 U.S.C. § 5321(a)(5). Willful violations may also be subject to criminal penalties under 31 U.S.C. § 5322(a), 31 U.S.C. § 5322(b), or 18 U.S.C. § 1001.